ROBERT JYSTAD (Bar No. 187340)
JULIAN K. QUATTLEBAUM (Bar No. 214378)
JAMIE T. HALL (Bar No. 240183)
CHANNEL LAW GROUP, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802-4323
Telephone: (310) 209-8515
Facsimile: (562) 216-5090

Attorneys for Plaintiffs,
AMERICAN TOWER CORPORATION

MICHAEL J. AGUIRRE, City Attorney
JOHN H. SERRANO, Deputy City Attorney (S.B. #086432)
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100
Telephone: (619) 533-5800
Facsimile: (619) 533-5856

Attorneys for Defendant,
CITY OF SAN DIEGO, CALIFORNIA

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERICAN TOWER CORPORATION, a Delaware corporation, **Plaintiffs,** **vs.** **THE CITY OF SAN DIEGO, CALIFORNIA, a political subdivision of the State of California,** **Defendant.**	**Case No. 08cv864 LAB (NLS)** **JOINT MOTION FOR STAY OF LITIGATION PENDING NINTH CIRCUIT'S *EN BANC* REHEARING OF *SPRINT TELEPHONY PCS, LP*, ET AL. *V. COUNTY OF SAN DIEGO*, ET AL.** **District Judge: Hon. Larry A. Burns** **Courtroom: 9**

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

Plaintiffs AMERICAN TOWER CORPORATION, A DELAWARE CORPORATION, , and Defendant CITY OF SAN DIEGO, CALIFORNIA (individually "Party" and, collectively, the "Parties"), by and through their undersigned attorneys hereby submit this Joint Motion for Stay of Litigation Pending the Ninth Circuit's *En Banc* Rehearing of *Sprint Telephony PCS, LP*, et al. *v. County of San Diego*, et al., 490 F.3d 700 (9th Cir. 2007) (hereinafter "*County of San Diego*").

The Parties' request for a stay of proceedings arises as a result of the Ninth Circuit's Order dated May 14, 2008, which granted the County of San Diego's motion for reconsideration of *County of San Diego* and noted expressly that "The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit" *Sprint Telephony PCS, LP*, et al. *v. County of San Diego*, et al., 2008 U.S. App. LEXIS 10421 (9th Cir., filed May 14, 2008) ("May 14th Order" attached as Exhibit 1).

The Parties agree that the *en banc* ruling in *County of San Diego* will be important to the outcome of key claims in the present litigation and that a decision by the Court that is not based on *County of San Diego* or its progeny, in short order, could be rendered obsolete. The Ninth Circuit has already set June 24, 2008 as the date for oral argument and the parties in that case are presently filing briefs under tight deadlines. Although the Parties cannot predict how quickly the Ninth Circuit is likely to act, the Parties are aware that the Ninth Circuit is operating under a highly expedited time frame and believe that it is likely the *en banc* ruling will be issued quickly.

The Parties also agree that a stay is the fairest course for the Parties and that proceeding in the present case without a stay will result in hardship and inequity to both Parties. First, the Plaintiffs filed their complaint prior to the issuance of the May 14th Order and did not take into account the impact of an order not to cite *County of San Diego* as precedent. In addition, as a result of the May 14th Order, the Parties are put in the unfair and untenable position of having to speculate regarding the outcome of the *en banc* ruling and to formulate arguments that both avoid

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

reference to a critical line of cases and yet have the possibility of leading the Court to an outcome that is not immediately overturned. This guesswork is not consistent with principles of fairness that should govern the judicial process or the orderly course of justice.

In addition, a brief stay of the litigation in order to allow the Ninth Circuit time to issue its *en banc* ruling will prevent the unnecessary and wasteful use of judicial resources and the Parties' resources which is likely to result if the Parties or the Court guesses wrong about the outcome of the *en banc* decision. Finally, a stay is consistent with the orderly course of justice in that it would simplify the Parties' arguments and the Court's deliberations and will avoid the needless complications of moving the litigation forward under the restrictions of the May 14th Order.

THEREFORE, Plaintiffs and the City stipulate, by and between their respective counsel, as follows:

1. That the Court is authorized to stay this litigation "under the powers to control its own docket and to provide for the prompt and efficient determination of the cases pending before it." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1111 (9th Cir. 2005) citing *Levya v. Certified Grocers of California, Ltd.*, 593 f.2d 857, 863-4 (9th Cir. 1979) ("a trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case");

2. The Court has issued a similar stay in the related case of *American Tower Corporation v. City of San Diego* et al., Case No. 07cv0399-LAB (NLS) (First Amended Complaint filed August 29, 2007) (order staying proceedings attached as Exhibit 2) and the Parties will seek a will seek a similar stay in the related case of *American Tower Corporation v. City of San Diego* et al., Case No. 08cv0435 LAB (NLS) (filed March 12, 2008).

3 Subject to the court's approval, from the date of the order on this stipulation to and including the Ninth Circuit's ruling in *County of San Diego*, all proceedings in this matter shall be

stayed;

4. Following issuance of the Ninth Circuit's ruling in this case, the Parties are ordered promptly to file a notice so stating; and

5. The present Notice and Order Setting Telephonic Early Neutral Evaluation Conference with Counsel Only dated June 6, 2008 is hereby VACATED and as soon as the Parties file a notice of the Ninth Circuit's *en banc* ruling, they shall call Judge Stormes' chambers to request to set a date for a telephonic early neutral evaluation conference.

Respectfully submitted

Dated: July 7, 2008 **CHANNEL LAW GROUP, LLP**

s/ Robert Jystad______________
Robert Jystad

Attorney for Plaintiff American Tower Corporation
E-mail: rjystad@channellawgroup.com

Dated: July 7, 2008 **CITY OF SAN DIEGO**

s/ John Serrano______________
John H. Serrano

Attorney for Defendant City of San Diego
E-mail: JSerrano@sandiego.gov

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT LIST

1	*Sprint Telephony PCS, LP*, et al. *v. County of San Diego*, et al., 2008 U.S. App. LEXIS 10421 (9th Cir., filed May 14, 2008)
2	Order Staying Proceedings (dated July 2, 2008)

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 1

SPRINT TELEPHONY PCS, L.P., a Delaware limited partnership, Plaintiff-Appellant-Cross-Appellee, and PACIFIC BELL WIRELESS LLC, a Nevada limited liability company, dba Cingular Wireless, Plaintiff, v. COUNTY OF SAN DIEGO; GREG COX, in his capacity as supervisor of the County of San Diego; DIANNE JACOB, in her capacity as supervisor of the County of San Diego; PAM SLATER, in her capacity as supervisor of the County of San Diego; RON ROBERTS, in his capacity as supervisor of the County of San Diego; BILL HORN, in his capacity as supervisor of the County of San Diego, Defendants-Appellees-Cross-Appellants.

Nos. 05-56076, 05-56435

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

2008 U.S. App. LEXIS 10421

May 14, 2008, Filed

PRIOR HISTORY: [*1]
D.C. No. CV-03-1398-BTM.
Sprint Telephony PCS, L.P. v. County of San Diego, 479 F.3d 1061, 2007 U.S. App. LEXIS 5753 (9th Cir. Cal., 2007)

COUNSEL: For Sprint Telephony PCS, L.P., Plaintiff-Appellant: Daniel T. Pascucci; Nathan R. Hamler.

For County of San Diego, Defendant-Appellee: Thomas D. Bunton; John Sansome.

For Greg Cox, Defendant-Appellee: Thomas D. Bunton; John Sansome.

For Dianne Jacob, Defendant-Appellee: Thomas D. Bunton; John Sansome.

For Pam Slater, Defendant-Appellee: Thomas D. Bunton; John Sansome.

For Ron Roberts, Defendant-Appellee: John Sansome; Thomas D. Bunton.

For Bill Horn, Defendant-Appellee: Thomas D. Bunton; John Sansome.

For California State Association of Counties, Amicus Curiae: Lizanne Reynolds.

For The League of California Cities, Amicus Curiae: Lizanne Reynolds.

For International Municipal Lawyers Association, Amicus Curiae: Lizanne Reynolds.

For T-Mobile USA, Inc. and PCIA, The Wireless Infrastructure Association, Amicus Curiae: Chung-Han Lee.

For NATIONAL LEAGUE OF CITIES, NATIONAL ASSOCIATION OF COUNTIES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, LEAGUE OF CALIFORNIA CITIES, NEW JERSEY STATE LEAGUE OF MUNICIPALITIES, Amicus Curiae: William K. Sanders.

JUDGES: KOZINSKI, Chief Judge.

OPINION BY: KOZINSKI

OPINION

ORDER

KOZINSKI, Chief Judge:

Upon [*2] the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to *Circuit Rule 35-3*. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit. [1]

1 Judges McKeown and M. Smith are recused.

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERICAN TOWER CORPORATION, a Delaware corporation, Plaintiff, vs. THE CITY OF SAN DIEGO, CALIFORNIA, THE CITY COUNCIL OF THE CITY OF SAN DIEGO, CALIFORNIA AND THE DEVELOPMENT SERVICES DEPARTMENT OF THE CITY OF SAN DIEGO, CALIFORNIA, Defendants.	CASE NO. 07CV0399-LAB (NLS) **ORDER STAYING PROCEEDINGS**

On June 5, 2008, the parties jointly moved to stay litigation pending the Ninth Circuit's en banc ruling in *Sprint Telephony PCS, LLP, et al. v. County of San Diego*, et al., Case Nos. 05-56076, 05-56435. The joint motion asked that the stay be lifted no earlier than December 8, 2008. On June 12, 2008, the court granted the joint motion in part, vacating the hearing on the pending cross motions for summary judgment or summary adjudication but denying the request to suspend briefing on those motions. The Court reserved ruling on the question of the requested stay.

The cross motions are now fully briefed and the Court now **GRANTS IN PART** the request for stay of proceedings. All proceedings in this case are hereby **STAYED** pending the Ninth Circuit's ruling in *Sprint Telephony*. Following issuance of the Ninth Circuit's en banc ruling in this case, the parties are **ORDERED** promptly to file a notice so stating. The parties may then, if they wish, each file supplemental briefing no later than **21 calendar days from the issuance of the Ninth Circuit's decision**. Each party's supplemental briefing shall not exceed ten pages, not counting material appended or lodged with the Court. Following the Ninth Circuit's decision, the Court will lift its stay. The cross motions may be re-set for oral argument if the Court determines oral argument is appropriate, *see* Civil Local Rule 7.1(d)(1), but if oral argument is not reset, the cross motions will be under submission as of 28 calendar days after the issuance of the Ninth Circuit's decision.

IT IS SO ORDERED.

DATED: July 2, 2008

HONORABLE LARRY ALAN BURNS
United States District Judge

Channel Law Group, LLP
100 Oceangate, Suite 1400
Long Beach, CA 90802

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Oceangate, Suite 1400, Long Beach, CA 90802.

On July 7, 2008, I served the attached document described as:

JOINT MOTION TO STAY LITIGATION PENDING THE NINTH CIRCUIT'S *EN BANC* REHEARING OF *SPRINT TELEPHONY PCS, LP*, ET AL. *V. COUNTY OF SAN DIEGO*, ET AL.

on the interested parties in this action as follows:

John H. Serrano, Esq.
Deputy City Attorney
Office of the City Attorney
City of San Diego
1200 Third Avenue, Suite 1100
San Diego, CA 92101

I served a true copy of the foregoing document by way of the Court's electronic filing/serving system, file and serve website. Further, I hereby certify that on June 4, 2008, I included opposing counsel in the electronic mail sent to judge's chambers.

I declare under penalty pursuant to the laws of the United States that the above is true and correct.

Executed on July 7, 2008, in Long Beach, California.

/s Robert Jystad

Attorney for Plaintiffs American Tower Corporation
E-mail: rjystad@channellawgroup.com